

COUNTY OF SUFFOLK

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Department of Economic Development and Planning
Division of Planning and Environment

STAFF REPORT **SECTIONS A14-14 THRU A14-24 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE**

Applicant: Town of Brookhaven - Introductory Local Law #21 Of 2021
Municipality: Town of Brookhaven
Location: Parts of North Bellport

Received: October 22, 2021
File Number: BR-21-17

Jurisdiction: Zoning Ordinance or Map / Zoning Amendment

PROPOSAL DETAILS

OVERVIEW – Creation of a Bellport Overlay District to further implement 2014 Greater Bellport Land Use Plan by amending Various Sections of Chapter 85 entitled "Zoning" of the Town Code of the Town of Brookhaven

In 2014 the Town of Brookhaven adopted the Greater Bellport Land Use Plan for portions of the hamlets of North Bellport, Hagerman, and East Patchogue. The Land Use Plan “details land use strategies, zoning recommendations and Town Code amendments that will guide future growth while preserving and enhancing the character of the neighborhoods involved and addressing elements common to the Montauk Highway and Station Road corridors.”

The plan includes a number of broad goals, including to “create hamlet centers along Montauk Highway, return blighted properties to productive uses, create a linear park or esplanade, and provide alternative housing options, among several others. Some of the several expected beneficial impacts of the plan include:

- Placing limits on sprawl, incompatible mixed land uses, and auto-centric uses which are prevalent along the Montauk Highway corridor;
- Developing required enhancements for new developments within hamlet centers and creating more walkable communities;
- Encouraging “main-street” mixed-use land uses along Montauk Highway within the defined hamlet centers;

- Providing an incentive for connection of the area to a County-owned sewage treatment plant;
- Phasing out pre-existing, non-conforming land uses which have potential adverse environmental impacts; among others.

To advance these objectives, the 2014 plan recommends the creation of four separate overlay districts, described below. The proposed action and local law seeks to implement and modernize the recommendations of the 2014 Greater Bellport Land Use Plan by establishing each of these districts.

All of the four proposed sub-overlay districts fall within an area identified as a Potential Environmental Justice Area¹.

Bellport Hamlet Center Overlay

This proposed sub-overlay district would apply to a block-front along the west side of Station Road between Patchogue Avenue and Atlantic Avenue, including a paper street. It also includes two blocks between Montauk Highway and Atlantic Avenue between Hoffman Avenue and Michigan Avenue, the latter of which is only partly paved. The boundaries of this district, containing 19 tax parcels covering 7.64 acres, reflects the proposed boundaries recommended in 2014. The properties contain many vacant and some partially developed parcels. The area is currently zoned for multifamily housing along Station Road, and commercial uses along Montauk Highway. This sub-overlay district appears to be intended for high-density residential use.

The proposed code amendment notes that “this overlay will continue to allow uses within the underlying zoning district(s) as well as allowing a new High-Density Residential use.” This overlay district acts as an incentive zoning district by providing an opportunity to increase the permitted residential density in exchange for stated incentives. The maximum “base density” is seven (7) units per acre, but the maximum permitted density with incentive bonuses is 25 units per acre. The Planning Board is authorized to increase base density pursuant to a formula spelled out in the code:

- Utilizing an existing public sewage treatment plant or providing 30% extra sanitary capacity (+ 7 units/acre)
- Providing 100% affordability (+4 units/acre)
- Construction of “a service or use identified as being substantially underserved within the community” (+4units/acre)
- Use of high-quality, fire-resistant structural materials (+1 unit/acre)
- “Substantial amounts” of green energy technologies (+1 unit/acre)
- Housing for those who have special needs (+1 unit/acre)

¹ Potential Environmental Justice Areas are U.S. Census block groups of 250 to 500 households each that, in the Census, had populations that met or exceeded at least one of the following statistical thresholds:

1. At least 52.42% of the population in an urban area reported themselves to be members of minority groups; or
2. At least 26.28% of the population in a rural area reported themselves to be members of minority groups; or
3. At least 22.82% of the population in an urban or rural area had household incomes below the federal poverty level.

The federal poverty level and urban/rural designations for census block groups are established by the U.S. Census Bureau. The thresholds are determined by a statistical analysis of the 2014-2018 American Community Survey (ACS) data, which is the most recent data available as of the time of the analysis in 2020. Source: <https://www.dec.ny.gov/public/911.html>

- Base Density = 7 units/acre
- Max Bonus = 18 units/acre
- Max Density = 25 units/acre

In this overlay, the maximum permitted height shall be fifty (50) feet. No more than 30% of the units can exceed 1,200 sq. ft., and at least 30% of units shall be 800 sq. ft. or less. The minimum unit size is 400 sq. ft. The proposed code requires the creation of indoor or outdoor “civic space” such as plazas, greens and parks, as well as outdoor recreational areas. A minimum of two (2) square feet civic space per residential unit shall be provided in addition to two-hundred (200) square feet of outdoor recreational areas per unit. The proposed code notes that civic spaces are above and beyond the requirements for recreational spaces. The code notes that “at least one civic space location shall be devoted to creation of a focal point that is dedicated to the advancement of the arts or advances the historic or cultural significance of the community.”

The Bellport Hamlet Overlay district requires continuous sidewalks and interior bicycle storage, as well as bike paths at the direction of the Town Board or Planning Board.

It is noted that under the proposed overlay, all principal and accessory uses permitted within the underlying zoning district(s) shall be permitted. This would ostensibly allow low-density residential uses to be developed under the block zoned for A-1, and commercial or mixed uses to be developed under the two blocks zoned for J-6 Business District (Main Street Business), which is intended to provide a Main Street “storefront character” designed to give priority to pedestrians.

Greater Bellport Opportunity Overlay

This proposed sub-overlay district would apply to “one of the last large blocks of vacant residentially zoned property within the Greater Bellport area,” roughly bounded by Atlantic Avenue to the south, Brookhaven Avenue to the north, Bourdois Avenue to the west, and Hoffman Avenue to the east. This area is transversed by paper streets. The block contains residentially-developed properties around the perimeter of the block, including several on Hoffman and the entire eastern block-face on Bourdois Avenue, which are all excluded from this proposed overlay district.

The boundaries of this district, containing 79 tax parcels covering 23.38 acres, reflects the proposed boundaries recommended in 2014. The properties contain exclusively vacant parcels zoned for A-1 low-density residential use. According to the proposed code language, this sub-overlay district appears to be intended for “Mansion Flats” that are typically a larger dwelling made up of 2, 3 or 4 individual units”.

Similarly to the proposed *Bellport Hamlet Center Overlay* sub-district, this overlay will allow uses within the underlying zoning district, namely low-density residential uses. The proposed *Greater Bellport Opportunity Overlay* would allow by Planning Board Special Exception medium-density multi-family housing, including “2, 3 or 4 unit “Mansion Flats” and similar multi-family housing.”

Under this sub-district, the maximum permitted height shall be two and one-half stories and thirty-five (35) feet. The same requirements on residential unit size, civic space, and recreational areas as the Bellport *Hamlet Center Overlay* would apply.

The base density of this sub district is 2 units per acre and also offers incentives in the form of density bonuses. The Planning Board is authorized to increase base density by special permit pursuant to a formula spelled out in the code:

- Utilizing an existing public sewage treatment plant or providing 30% extra sanitary capacity (+ 4 units/acre)
 - Dedicating 0.25 acres of remediated improved land within the *Bellport Esplanade and Greenway District* (+20 units/ 0.25 improved acre dedicated)
 - Dedicating 0.25 acres of unimproved land within the *Bellport Esplanade and Greenway District* (+3 units/ 0.25 unimproved acre dedicated)
 - Use of high-quality, fire-resistant structural materials (+1 unit/acre)
 - “Substantial amounts” of green energy technologies (+1 unit/acre)
 - Providing 100% affordability (+5 units/acre)
 - Housing for those who have special needs (+1 unit/acre)
- Base Density = 2 units/acre
 - Max Bonus = 6 units/acre (effective limit)
 - Max Density = 8 units/acre

This sub-district offers a density bonus for dedicating parcels within the *Bellport Esplanade and Greenway District*, thereby creating an effective “sending” and “receiving” district for the purpose of transferring development potential from the planned greenway area along Montauk Highway. Remediated properties with improvements are worth 20 additional units per dedicated 0.25 acre, compared to 3 additional units for a quarter-acre of dedicated unimproved property. While there is no cap on the amount of land dedication, the maximum permitted density is capped 8 units/acre, creating an effective limit of +6 units/ per acre, which can be achieved through a combination of land dedication and/or other incentives.

Hagerman Hamlet Center Overlay

This proposed sub-overlay district would apply to the block-faces along Montauk Highway between Americus Avenue and Macdonald Avenue, as well as six parcels in the block bounded by Davidson Avenue, Ecke Avenue, Atlantic Avenue, and Montauk Highway. The boundaries of this district, containing 36 tax parcels covering 12.51 acres, largely reflects the proposed boundaries recommended in 2014, with the addition of the six aforementioned parcels which did not appear in the original plan. The underlying zoning in this area consists of J-6 (Main Street Business), J-2 (General Business) as well as A-1 Residential (1-Acre) in one block where the overlay extends to Atlantic Avenue.

Under this sub-district, the maximum permitted height shall be 50 feet, with the same requirements for civic and recreational areas indicated above. As with the other proposed sub-districts, this overlay will allow uses within the underlying zoning district, namely Main Street

and General Businesses. The existing J-6 Main Street Business District permits first floor commercial, 2nd floor office or residential use and 3rd floor residential use. The overlay would allow multi-family housing by Town Board Special Permit. The code would require at least 50% of the ground floor frontage along Montauk shall be devoted to commercial uses.

The base density of this sub district is 5 units per acre and also offers incentives in the form of density bonuses. The Town Board is authorized to increase base density by special permit pursuant to a formula spelled out in the code:

- Utilizing an existing public sewage treatment plant or providing 30% extra sanitary capacity (+ 10 units/acre)
 - Dedicating 0.25 acres of remediated improved land within the *Bellport Esplanade and Greenway District* (+20 units/ 0.25 improved acre dedicated)
 - Dedicating 0.25 acres of unimproved land within the *Bellport Esplanade and Greenway District* (+3 units/ 0.25 unimproved acre dedicated)
 - Use of high-quality, fire-resistant structural materials (+1 unit/acre)
 - “Substantial amounts” of green energy technologies (+1 unit/acre)
 - Providing 100% affordability (+5 units/acre)
 - Housing for those who have special needs (+1 unit/acre)
- Base Density = 5 units/acre
 - Max Bonus = 15 units/acre (effective limit)
 - Max Density = 20 units/acre

As with the *Greater Bellport Opportunity Overlay*, this sub-district offers a density bonus for dedicating parcels within the *Bellport Esplanade and Greenway District*, thereby creating an effective “sending” and “receiving” district for the purpose of transferring development potential from the planned greenway area along Montauk Highway.

Bellport Esplanade and Greenway Overlay

The 2014 Greater Bellport Land Use Plan recommends the creation of a linear park or esplanade by the “public assemblage of the shallow and narrow lots created between Montauk Highway and the LIRR tracks.” The plan notes that this area has “developed chaotically without benefit of landscaping and adequate parking facilities,” resulting in commercial blight. This area is identified as an opportunity to increase the residential density in the *Greater Bellport Opportunity Overlay* and the *Hagerman Hamlet Center Overlay*.

This proposed sub-overlay district would apply to the area between Montauk Highway and the LIRR tracks, spanning from Munsell Road to the West and New Jersey Avenue to the East. This sub-district applies to 22 parcels covering 4.78 acres, creating a linear area approximately 0.8 miles long. The underlying zoning in the area is J-2 (General Business) and J-5 (High Intensity Business), and consists of a combination of vacant and developed parcels, including auto-body and commercial uses.

Unlike the other sub-districts, the proposed code amendment does not provide for additional uses or supplemental dimensional regulations. This district is targeted as a “sending” district in order to support a linear park rather than redevelopment. Presumably all of the underlying zoning would apply in the General Business and High Intensity Business zones.

STAFF ANALYSIS

Staff notes that several parcels and blocks fronting on Montauk Highway have been excluded from the both the *Bellport Hamlet Center Overlay* and the *Hagerman Hamlet Center Overlay*. While many of these parcels are residential in nature, others are not. It is not clear from the submission materials why these parcels or blocks have not been included. Staff finds that where small mid-block parcels have been excluded from the overlays, the redevelopment potential of the remainder of the block is likely to be significantly limited. To the extent that it would facilitate the desired redevelopment and advance the goals of the plan, staff would suggest that the Town consider including entire blocks within overlay zones wherever possible.

Further, in order to achieve a uniform and consistent “Main Street” development pattern and increase walkability, it would likely be beneficial for the overlay districts to form a continuous frontage along Montauk Highway with minimal gaps or outparcels, to the extent feasible. The overlay zones follow SCTM parcel boundaries, whereas the underlying commercial zoning appears to be a “strip zone” based on proximity to the Montauk Highway right of way, resulting in commercial zoned parcels or “split-zoned” portions thereof which are not entirely included in the overlay. Staff finds that where commercially-zoned areas have not been included in the overlay area, confusion or incompatible development could potentially result. For ease of implementation and to avoid incompatible development, the Town may wish to consider implementing coterminous zoning boundaries, or code language that addresses “split-zoned” properties as applicable to the proposed Overlay Districts.

It is not immediately clear from the referral materials whether the “mixed-use” permitted in the underlying J-6 Main Street Business Zoning would be permissible with the high-density residential uses permitted by the proposed *Bellport Hamlet Center Overlay*. Staff would recommend clarifying the language in the overlay district with regard to mixed-use buildings, including whether mixed-use buildings are eligible for all of the density bonuses for high-density residential developments described therein. Further, the Town may wish to clarify that partial or proportional credit is not permitted towards density bonuses, assuming that is the intent.

Staff notes that several of the proposed by density bonuses contain language that may be considered subjective or otherwise open to varying interpretation. In order to ensure a smooth implementation of the overlays by future generations and avoid potential disputes, it may be helpful to provide further examples, clarification, definitions, and/or benchmarks for terms such as “Substantial amounts,” “substantially underserved” or “high-quality.” For example, the Town may wish to provide further details as it relates to materials that are considered above and beyond what would ordinarily be acceptable. Wherever possible, it is best practice to provide clear guidance for the Boards, applicants, and members of the public while allowing the decision-making body’s appropriate flexibility and discretion. Staff suggests that further clarification and explanation may be needed in the code language regarding the required “civic

spaces,” as distinct from the “recreation spaces.” The required two square feet per unit seems potentially inadequate for a meaningful amenity.

In all proposed sub districts, the underlying zoning remains in effect, including as-of-right and special permit uses for high-intensity business in the *Bellport Esplanade and Greenway Overlay*. As many of these high-intensity commercial uses would likely be incompatible with the proposed greenspace and stated goals of the plan, staff finds that it may be beneficial for the Town to reexamine the as-of-right and special exceptions in the underlying zoning districts, and consider amending the overlay to prohibit or otherwise limit uses that would be incompatible with this plan. Staff notes that any preexisting legal uses rendered non-permitted would be regulated as legal non-conforming uses in accordance with the Town code.

The plan calls for the development of “Mansion Flats,” within the *Greater Bellport Opportunity Overlay*. These are described as “typically a larger dwelling made up of 2, 3 or 4 individual units.” Staff notes that this housing typology does not seem to have a precise definition in the existing or proposed code, and this description is so broad it could also encompass a variety of “middle housing” types including two-family homes, duplexes, triplexes, fourplexes, townhouses, etc. If the goal of this code is to implement particular forms of housing, staff would recommend that the proposed code be supplemented with specific design and/or architectural guidelines to ensure that the intent of the “mansion flat” or other desired typologies are clearly articulated and visualized. To that extent, the [Suffolk County Residential Design Guidelines](#) may provide a useful resource.

Staff notes that all residential and mixed-use projects developed under the overlay zones will need to connect to sewage treatment or provide an on-site sewage treatment facility. The plan incentivizes the creation of excess sewage capacity. Staff finds that it would be helpful for the Town to take a comprehensive look at where these facilities will be located, and clarify standards on the siting and location of these facilities throughout the neighborhood in order to ensure orderly development and minimize any impacts.

Staff notes that this area has been classified as a Potential Environmental Justice area and has been subject to previous planning efforts. To ensure that new developments implemented under the proposed overlays are consistent with the community’s vision and goals, it is important that there be continued community engagement and opportunities for public input and participation.

STAFF RECOMMENDATION

Approval of the proposed code update with the following comments:

1. Due to the community’s classification as an Environmental Justice area and several planning efforts that have been undertaken with limited implementation as a result, it is strongly advised that any development project moving forward within the overlay zone conduct robust community engagement efforts, beginning early in the project’s life cycle and happening frequently throughout the planning and development phases to ensure several opportunities for community input and potential alignment, to the extent feasible, with the community’s vision.

2. The Town should consider revising its overlay districts use restrictions with regard to the underlying zoning district(s). To the extent that any underlying uses may be incompatible with the stated goals and intents of this plan, they should be limited as appropriate and regulated as non-conforming uses.
3. The Town should consider supplementing the proposed overlays with specific design and/or architectural design standards describing and illustrating the form of the intended developments to provide clear guidance to applicants. Design guidelines could further define and illustrate housing typologies such as “mansion flats” that are not clearly defined by code. Applicants should be encouraged to review the [Suffolk County Residential Design Guidelines](#).
4. The Town should consider forms of “missing middle housing” such as duplex, triplex, fourplex, or townhouse units that may be appropriate as alternative affordable housing typologies to single-family detached units and multifamily buildings.
5. The Town should consider providing further examples, clarification, definitions, and/or benchmarks for any terms that could be subject to varying interpretation, especially with regard to zoning incentives.
6. To the extent that it would facilitate the desired redevelopment, the Town should consider making overlays continuous areas with few gaps or outparcels. The Town should further consider making the boundaries of the overlay districts coterminous with the underlying districts, or else further clarify how regulations might apply to split-zoned parcels that fall outside the overlay boundaries.
7. As sewage treatment will need to be provided for any developments in the overlay districts, the Town may want to look comprehensively at the amount and siting of sewage treatment facilities compared to public wastewater connections, especially in a potential environmental justice area, that would be necessary under the full buildout scenario, and provide further regulation or guidance on the siting of these facilities.
8. The Town should consider encouraging or incentivizing parking stall demand reduction strategies to help reduce the number of parking stall required in new developments. Applicants should review the Commissions Model Code on Parking Stall Demand Reduction or be required to explore additional techniques to reduce parking demand including but not limited to the unbundling of parking cost from rent, parking cash-out programs, promotion of car sharing and ridesharing, etc. The SCPC Model Code for Parking Stall Demand Reduction includes twenty three concepts for the reduction of parking stall demand. The Suffolk County Planning Commission has produced a draft “model code” and report on such PSDR techniques and has recommended that no building or structure should be constructed, used or occupied without the adoption of Parking Stall Demand Reduction (PSDR) techniques conditioned, through covenants and restrictions, on land use and development approvals issued by municipal planning boards. For convenience a link to the model code is provided below:

9. Affordable units within market-rate buildings should have consistent design and consistent access to those of the rest of the development. (i.e. no separate entrances)
10. Applicants within the proposed overlay districts should be encouraged to review the Suffolk County Planning Commission publication on Managing Stormwater-Natural Vegetation and Green Methodologies and incorporate into the proposal, where practical, design elements contained therein.
11. Applicants within the proposed overlay districts should be encouraged to review the Suffolk County Planning Commission Guidebook particularly with respect to public safety and universal design and incorporate where practical, applicable elements contained therein.
12. Applicants within the proposed overlay districts should be encouraged to review the Suffolk County Planning Commission Guidebook particularly related to energy efficiency.
13. Applicants within the proposed overlay districts should be encouraged to review the Suffolk County Planning Commission Guidebook particularly related to Climate Change effecting greenhouse gas reduction and renewable energy practices.”

December 1, 2021

